HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/HB 439 Land Use and Development Regulations
SPONSOR(S): State Affairs Committee, Commerce Committee, Local Administration, Federal Affairs & Special Districts Subcommittee, McClain
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1604

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration, Federal Affairs & Special Districts Subcommittee	13 Y, 3 N, As CS	Mwakyanjala	Darden
2) Commerce Committee	16 Y, 2 N, As CS	Larkin	Hamon
3) State Affairs Committee	12 Y, 6 N, As CS	Mwakyanjala	Williamson

SUMMARY ANALYSIS

The Florida Land Use and Environmental Dispute Resolution Act (FLUEDRA) provides an informal mechanism for a property owner to challenge a government action that may infringe on his or her property without having to file a lawsuit. Under FLUEDRA, a property owner who believes that a government notice or order unfairly or unreasonably burdens his or her property may file a request for relief with the government that issued the notice or order, which will then be turned over to a special magistrate with the authority to facilitate a resolution.

Counties and municipalities plan for future development and growth by adopting, implementing, and amending, as necessary, comprehensive plans, which contain elements to address certain issues. Comprehensive plans are implemented via land development regulations.

Related to FLUEDRA, the bill allows a negotiated settlement between a property owner and a local government to include resolutions similar to those a special magistrate is authorized to recommend; and provides that the special magistrate's recommendations or negotiated settlements inconsistent with the local comprehensive plan may be deemed consistent if the recommendations or settlements are found to protect the public interest.

Related to comprehensive planning, the bill:

- Revises data sources used in consideration of the comprehensive plan and plan amendments;
- Increases the length of required planning period to 10 years, from 5 years, and to 20 years, from 10 years;
- Revises the comprehensive plan evaluation and appraisal process to ensure timely updates;
- Requires land development regulations adopted by a local government to establish minimum lot sizes consistent with the maximum density authorized by the comprehensive plan and to provide standards for infill residential development;
- Prohibits a local government from requiring building design elements for certain residential structures in planned unit developments, master planned communities, or communities with a design review board or architectural review board created on or after January 1, 2020.
- Provides that holders of transportation or road impact fee credits are entitled to the full benefit of density or intensity prepaid by those credits when the local government adopts an alternative mobility funding system;
- Allows developers of an affordable housing project to expand the project onto an adjacent parcel, subject to certain conditions;
- Revises the electric substation approval process to apply to all new and existing substations; and
- Precludes an independent special district from complying with development agreements and certain other agreements if the agreements were executed within three months before the effective date of a law modifying the selection manner of the governing body of the district.

The bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida Land Use and Environmental Dispute Resolution Act

In 1995, the Legislature adopted the Florida Land Use and Environmental Dispute Resolution Act ("FLUEDRA"), codified as s. 70.51, F.S., to facilitate the resolution of disputes between property owners and governmental entities.[1] FLUEDRA provides an informal mechanism for a property owner to challenge a government action that may infringe on his or her property without having to file a lawsuit.

FLUEDRA does not create a private cause of action or require that a property owner do anything before exercising his or her right to file a lawsuit.[2] Under FLUEDRA, a property owner who believes that a government notice or order unfairly or unreasonably burdens his or her property may, within 30 days of receiving the notice or order, file a request for relief with the governmental entity that issued the notice or order.[3] The governmental entity must forward the request to a special magistrate, who must hold a hearing within 45 days of receiving the request for relief.[4] The special magistrate's primary role is to facilitate a resolution of the conflict between the property owner and governmental entity without involving the courts.[5] In this role, the special magistrate acts as a facilitator or mediator.[6]

If the parties cannot reach an agreement, the special magistrate must determine whether the government action is unreasonable or unfairly burdens the property owner's real property, based on a list of statutory guidelines.[7] Within 14 days of the hearing's conclusion, the special magistrate must submit a written recommendation to the parties.[8] If the special magistrate's recommendation is that the government action does not unreasonably or unfairly burden the property, the property owner may still file suit or pursue other remedies.[9] If the recommendation is that the government action unreasonably or unfairly burdens the property, the special magistrate may, with the property owner's consent, recommend alternatives that allow for reduced government restraints on the property, including, but not limited to:

- An adjustment of land development or permit standards or other provisions controlling the development or use of land;
- Increases or modifications in the density, intensity, or use of areas of development;
- The transfer of development rights;
- Land swaps or exchanges;
- Mitigation, including payments in lieu of onsite mitigation;
- Location on the least sensitive portion of the property;
- Conditioning the amount of development or use permitted;
- A requirement that issues be addressed on a more comprehensive basis than a single proposed use or development;
- Issuance of the development order, a variance, special exception, or other extraordinary relief, including withdrawal of the enforcement action; and
- Purchase of the real property, or an interest therein, by an appropriate governmental entity.[10]

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[1] *See* s. 70.51, F.S.
[2] S. 70.51(24), F.S.
[3] S. 70.51(3) and (4), F.S.
[4] S. 70.51(15)(a), F.S. A "special magistrate" is a person selected by the parties to resolve the case. The special magistrate must be a Florida resident with experience and expertise in mediation and at least one of the following disciplines and a working familiarity with the others: land use and environmental permitting; land planning; land economics; local and state government organizations and po wers; and the law governing the same. S. 70.51(2)(c) and (4), F.S.
[5] *See* s. 70.51(17)(a), F.S.
[6] *Id.*
[7] S. 70.51(17)(b) and (18), F.S.
[8] S. 70.51(19), F.S.
[9] S. 70.51(19)(a), F.S.
[10] S. 70.51(19)(b), F.S.

The governmental entity must respond within 45 days of receiving the special magistrate's recommendation and indicate whether it accepts, accepts in part, or rejects the recommendation.[11] If the governmental entity accepts the recommendation in whole or in part, but the property owner rejects the acceptance or modification, the governmental entity must put in writing within 30 days the specific permissible uses of the property.[12]

The special magistrate's recommendation finding that the governmental entity acted unreasonably or unfairly may serve as a basis to demonstrate entitlement to relief in a subsequent lawsuit or in other legal proceedings.[13] The FLUEDRA process may not continue longer than 165 days, unless the parties agree otherwise.[14]

Comprehensive Plans

Each county and municipality must plan for future development and growth by adopting, implementing, and amending as necessary a comprehensive plan.[15] Comprehensive plans are implemented through land development regulations and elements.[16] Each comprehensive plan contains elements that address future land use, housing, transportation, infrastructure, coastal management, conservation, recreation and open space, intergovernmental coordination, and capital improvements.

At least once every seven years, each local government must evaluate its comprehensive plan to determine if plan amendments are necessary to reflect changes in state requirements since the last update of the comprehensive plan and must notify the state land planning agency as to its determination.[17] If the local government determines amendments to its comprehensive plan are necessary, the local government must prepare and send to the state land planning agency within one year such plan amendment or amendments for review.[18] Local governments are encouraged to evaluate and update their comprehensive plans to reflect changes in local conditions.[19] If a local government fails to submit an evaluation of its comprehensive plan at least once in seven years to the state land planning agency or update its plan as necessary in order to reflect changes in state requirements, the local government may not amend its comprehensive plan until such time that an evaluation is submitted.[20]

Comprehensive plans must include at least two planning periods, one covering the first five-year period occurring after the plan's adoption and one covering at least a 10-year period.[21] Additional planning periods are permissible and accepted as part of the planning process.

All elements of a plan or plan amendment must be based on relevant, appropriate data[22] and an analysis by the local government.[23] The data supporting a plan or amendment must be taken from professionally accepted sources.[24] The plan must be based on permanent and seasonal population estimates and projections published by the Office of Economic and Demographic Research or generated by the local government based upon a professionally acceptable methodology.[25] The analysis by the local government may include, but is not limited to, surveys, studies, community goals and vision, and other data available at the time of adoption of the comprehensive plan or plan amendment.[26]

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[11] S. 70.51(21), F.S.
[12] S. 70.51(22), F.S.
[13] S. 70.51(25), F.S.
[14] S. 70.51(23), F.S.
[15] Ss. 163.3167(2), 163.3177(2), F.S.
[16] S. 163.3167(1)(c), F.S.
[17] S. 163.3191(1), F.S. The state land planning agency is the Department of Economic Opportunity. S. 163.3164(44), F.S.
[18] S. 163.3191(2), F.S. The review process is pursuant to s. 163.3184(4), F.S., the state coordinated review process for comprehensive plans and plan amendments.
[19] S. 163.3191(3), F.S.
[20] S. 163.3191(4), F.S.
[21] S. 163.3177(5)(a), F.S.
[22] "To be based on data means to react to it in an appropriate way and to the extent necessary indicated by the data available on that particular subject at the time of adoption of the plan or plan amendment at issue." S. 163.3177(1)(f), F.S.
[23] S. 163.3177(1)(f), F.S.
[24] S. 163.3177(1)(f)2., F.S.
[25] S. 163.3177(1)(f)3., F.S.
[26] S. 163.3177(1)(f), F.S.

Land Development Regulations

Comprehensive plans are implemented via land development regulations. Each county and municipality must adopt and enforce land development regulations, such as zoning or other housing-related ordinances, that are consistent with and implement their adopted comprehensive plan.[27] Local governments are encouraged to use innovative land development regulations[28] and may adopt measures for the purpose of increasing affordable housing using land-use mechanisms.[29]

All local government land development regulations must be consistent with the local comprehensive plan.[30] Additionally, all public and private development, including special district projects, must be consistent with the local comprehensive plan.[31] However, plans cannot require any special district to undertake a public facility project that would impair the district's bond covenants or agreements.[32]

Local governments are generally prohibited from adopting land development regulations relating to building design elements for single-family or two-family dwellings.[33] This prohibition does not apply to:

- Dwellings listed in, or located in a historic district listed in, the National Register of Historic Places;
- Dwellings listed as a historic property or located in a historic district as determined by a local preservation ordinance;
- Regulations adopted in order to implement the National Flood Insurance Program;
- Regulations adopted in accordance and compliance with procedures established for the adoption of local amendments to the Florida Building Code;
- Dwellings located in a community redevelopment area;
- Regulations that are required to ensure protection of coastal wildlife in compliance with the Dennis L. Jones Beach and Shore Preservation Act or the Florida Water Resources Act of 1972;
- Dwellings located in a planned unit development or a master planned community created by a local governing body; or
- Dwellings located within the jurisdiction of a local government that has a design review board or architectural review board.[34]

Future Land Use Element

Comprehensive plans must contain an element regarding future land use that designates proposed future general distribution, location, and extent of the uses of land for a number of uses and categories of public and private uses of land.[35] Each future land use category must be defined in terms of uses included, and must include standards to be followed in the control and distribution of population densities and building and structure intensities.[36] The proposed distribution, location, and extent of the various categories of land use must be shown on a land use map or map series. Future land use plans and plan amendments are

[27] S. 163.3202, F.S.
[28] S. 163.3202(3), F.S.
[29] Ss. 125.01055 and 166.04151, F.S.
[30] S. 163.3194(1)(b), F.S.
[31] *See* ss. 163.3161(6) and 163.3194(1)(a), F.S.
[32] S. 189.081(1), F.S.
[33] S. 163.3202(5)(a), F.S. Building design elements include external building color; the type or style of exterior cladding material; the style or material of roof structures or porches; the exterior nonstructural architectural ornamentation; the location or architectural styling of windows or doors; the location or orientation of the garage; the number and type of rooms; and the interior layout of rooms, but does include the height, bulk, orientation, location of a dwelling on a zoning lot, or the use of buffering or screening to minimize potential adverse physical or visual impacts or to protect the privacy of neighbors. S. 163.3202(5)(b)1., F.S.
[34] S. 163.3202(5)(a)1.-7., F.S.
[35] S. 163.3177(6)(a), F.S. Applicable uses and categories of public and private uses of land include, but are not limited to, residential, commercial, industrial, agricultural, recreational, conservation, educational, and public facilities. S. 163.3177(6)(a)10., F.S.
[36] S. 163.3177(6)(a)1., F.S.

based on surveys, studies, and data regarding the area[37] and the future land use element must include a future land use map or map series.[38]

Zoning

Zoning maps and zoning districts are adopted by a local government for developments within each land use category or sub-category. While land uses are general in nature, one or more zoning districts may apply within each land use designation.[39] Common regulations within the zoning map districts include density,[40] height and bulk of buildings, setbacks, and parking requirements.[41] Regulations for a zoning category in a downtown area may allow for more density and height than allowed in a suburb, for instance.

If a developer or landowner believes that a proposed development may have merit but it does not meet the requirements of a zoning map in a jurisdiction, the developer or landowner can seek a rezoning through a rezoning application which is reviewed by the local government and voted on by the governing body.[42] If a property has unique circumstances or small nonconformities but otherwise meets zoning regulations, local governments may ease restrictions on certain regulations such as building size or setback through an application for a variance.[43] However, any action to rezone or grant a variance must be consistent with the local government's comprehensive plan.

Ordinances or resolutions that change the actual list of permitted, conditional, or prohibited uses within a zoning category or ordinances or resolutions initiated by the local government that change the actual zoning map designation of a parcel or parcels of land must follow additional enhanced notice requirements:[44]

- If the area affected is less than 10 acres, the local government must notify by mail each property owner and hold a public meeting to discuss the ordinance or resolution before passage.[45]
- If the area affected is 10 acres or greater, the local government must hold two separate meetings to discuss the changes, and notice the public through either mail to each property owner or to the public generally by newspaper.[46]

Impact Fees

One method of funding local government transportation concurrency requirements is through the adoption and imposition of impact fees on new development. Local governments impose impact fees to fund

[37] S. 163.3177(6)(a)2., F.S.
[38] S. 163.3177(6)(a)10., F.S.
[39] Indian River County, General Zoning Questions, available at https://www.ircgov.com/communitydevelopment/planning/FAQ.htm#zoning1 (last visited Feb. 26, 2023)
[40] "Density" means an objective measurement of the number of people or residential units allowed per unit of land, such as residents or employees per acre. See s. 163.3164(12), F.S.
[41] Supra note 126.
[42] City of Tallahassee, Application for Rezoning Review, available at https://www.talgov.com/Uploads/Public/Documents/place/zoning/cityrezinfsh.pdf (last visited Apr. 19, 2023)
[43] *See e.g.*, City of Tallahassee, Variance and Appeals, available at https://www.talgov.com/Uploads/Public/Documents/growth/forms/boaa_variance.pdf (last visited Feb. 27, 2023) and Seminole County, Variance Processes, available at https://www.seminolecountyfl.gov/departments-services/development-services/planning-development/boards/board-of-adjustment/variance-process-requirements.stml (last visited Apr. 19, 2023)
[44] *See* ss. 125.66(4) and 166.041(3), F.S.
[45] *Id.*
[46] *See* ss. 125.66(4) and 166.041(3), F.S.

infrastructure[47] needed to expand local services to meet the demands of population growth caused by new growth.[48] Impact fees must meet the following minimum criteria when adopted:

- The fee must be calculated using the most recent and localized data.[49]
- The local government adopting the impact fee must account for and report impact fee collections and expenditures. If the fee is imposed for a specific infrastructure need, the local government must account for those revenues and expenditures in a separate accounting fund.[50]
- Charges imposed for the collection of impact fees must be limited to the actual costs.[51]
- All local governments must give notice of a new or increased impact fee at least 90 days before the new or increased fee takes effect, but need not wait 90 days before decreasing, suspending, or eliminating an impact fee. Unless the result reduces total mitigation costs or impact fees on an applicant, new or increased impact fees may not apply to current or pending applications submitted before the effective date of an ordinance or resolution imposing a new or increased impact fee.[52]
- A local government may not require payment of the impact fee before the date of issuing a building permit for the property that is subject to the fee.[53]
- The impact fee must be reasonably connected to, or have a rational nexus with, the need for additional capital facilities and the increased impact generated by the new residential or commercial construction.[54]
- The impact fee must be reasonably connected to, or have a rational nexus with, the expenditures of the revenues generated and the benefits accruing to the new residential or commercial construction.[55]
- The local government must specifically earmark revenues generated by the impact fee to acquire, construct, or improve capital facilities to benefit new users.[56]
- The local government may not use revenues generated by the impact fee to pay existing debt or for previously approved projects unless the expenditure is reasonably connected to, or has a rational nexus with, the increased impact generated by the new residential or commercial construction.[57]

The types of impact fees charged and the timing of their collection after issuing a building permit are within the discretion of the local government or special district authorities choosing to impose the fees.[58] In general, a building permit must be obtained before the construction, erection, modification, repair, or demolition of any building.[59] A development permit pertains to any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.[60] Local governments providing an exception or waiver of impact fees for the development or construction of affordable housing are not required to use any revenues to offset the impact of such development.[61]

Local governments must credit against impact fee collections any contribution related to public facilities or infrastructure on a dollar-for-dollar basis at fair market value for the general category or class of public facilities or infrastructure for which the contribution was made. If no impact fee is collected for that category of public facility or infrastructure for which the contribution is made, no credit may be applied.[62] Credits for impact fees may be assigned or transferred at any time once established, from one development or parcel

[47] "Infrastructure" means the fixed capital expenditure or outlay for the construction, reconstruction, or improvement of public facilities with a life expectancy of five or more years, together with specific other costs required to bring the public facility into service but excluding the costs of repairs or maintenance. The term also includes specific equipment. S. 163.31801(3), F.S.
[48] S. 163.31801(2), F.S. Water and sewer connection fees are not impact fees. S. 163.31801(12), F.S.
[49] S. 163.31801(4)(a), F.S.
[50] S. 163.31801(4)(b), F.S.
[51] S. 163.31801(4)(c), F.S.
[52] S. 163.31801(4)(d), F.S.
[53] S. 163.31801(4)(e), F.S.
[54] S. 163.31801(4)(f), F.S.
[55] S. 163.31801(4)(g), F.S.
[56] S. 163.31801(4)(h), F.S.
[57] S. 163.31801(4)(i), F.S.
[58] *See* s. 163.31801(2), F.S.
[59] S. 553.79, F.S.
[60] S. 163.3164(16), F.S.
[61] S. 163.31801(11), F.S.
[62] S. 163.31801(5), F.S.

to another within the same impact fee zone or district or within an adjoining impact fee zone or district within the same local government jurisdiction.[63]

Local governments may increase impact fees only under limited circumstances. A fee may be increased no more than once every four years and may not be increased retroactively. The fee increase may not exceed 50 percent of the current impact fee amount and must be consistent with a statutorily-compliant plan for the imposition, collection, and use of the fees. An increase not exceeding 25 percent of the current fee amount must be implemented in two equal annual increments, while an increase greater than 25 percent, but not exceeding 50 percent, of the current amount must be implemented in four equal annual installments. However, a local government may increase a fee more than once in four years or for more than 50 percent of a current impact fee amount if it has:

- Prepared a demonstrated-need study within 12 months before adopting the increase showing extraordinary circumstances necessitating the need for the increase;
- Conducted at least two publicly noticed workshops on the extraordinary circumstances justifying the increase; and
- Approved the increase by at least a two-thirds vote of the governing body.[64]

A local government that increases an impact fee must still provide the holder of any impact fee credit the full benefit of the density and intensity prepaid by the credit balance.[65]

With each annual financial report or audit filed[66] a local government must report specific information on impact fees imposed, including the specific purpose of the fee, the impact fee schedule describing the method of calculating the fee, the amount assessed for each purpose and for each type of dwelling, the total amount of fees charged by type of dwelling, and each exception or waiver to the imposition of impact fees provided for construction of affordable housing.[67] Additionally, the chief financial officer or executive officer (if there is no chief financial officer) must submit with the annual financial report an affidavit attesting that all impact fees were collected and expended by the local government, or on its behalf, in full compliance with the spending period provisions in the local ordinance and that funds expended from each impact fee account were used to acquire, construct, or improve those specific infrastructure needs.[68]

Mobility Plans and Fees

In the Community Renewal Act[69] of 2009 (Act), the Legislature found that the concept and application of transportation concurrency was "complex, inequitable, lack(ed) uniformity among jurisdictions, (was) too focused on roadways to the detriment of desired land use patterns and transportation alternatives, and frequently prevent(ed) the attainment of important growth management goals."[70] The Act required completion and submission of a mobility fee methodology study[71] and stated the Legislature's intent that a mobility fee "should be designed to provide for mobility needs, ensure that development provides mitigation for its impacts on the transportation system in approximate proportionality to those impacts, fairly distribute the fee among the governmental entities responsible for maintaining the impacted roadways, and promote compact, mixed-use, and energy-efficient development."[72] In 2013, the concept of a mobility fee-based funding system was added to the comprehensive planning statutes as an encouraged alternative to transportation concurrency.[73]

[63] S. 163.31801(10), F.S. In an action challenging an impact fee or a failure to provide proper credits, the local government has the burden of proof to establish the imposition of the fee or that the credit complies with the statute, and the court may not defer to the decision or expertise of the government. S. 163.31801(9), F.S.
[64] S. 163.31801(6), F.S.
[65] S. 163.31801(7), F.S.
[66] *See* ss. 218.32 and 218.39, F.S.
[67] S. 163.31801(13), F.S.
[68] S. 163.31801(8), F.S.
[69] Ch. 2009-96, s. 1, Laws of Fla.
[70] Ch. 2009-96, s. 13(1)(a), Laws of Fla.
[71] Center for Urban Transportation Research, *Evaluation of the Mobility Fee Concept Final Report*, University of South Florida (Nov. 2009), available at https://cutr.usf.edu/wp-content/uploads/2012/08/Evaluation-of-the-Mobility-Fee-Concept-CUTR-Webcast-04.21.11.pdf (last visited Apr. 19, 2023).
[72] Ch. 2009-96, s. 13(1)(b), Laws of Fla.
[73] Ch. 2013-78, s. 1, Laws of Fla.

Alternative mobility funding systems using a mobility fee are encouraged to incorporate one or more of the statutory tools and techniques, including:

- Adoption of long-term strategies to facilitate development patterns that support multimodal solutions, including urban design, appropriate land use mixes, intensity and density;
- Adoption of an area wide level of service not dependent on any single road segment function;
- Exempting or discounting impacts of locally desired development;
- Assigning secondary priority to vehicle mobility and primary priority to ensuring a safe, comfortable, and attractive pedestrian environment with convenient interconnection to transit;
- Establishing multimodal level of service standards that rely primarily on non-vehicular modes of transportation where existing or planned community design will provide an adequate level of mobility; and
- Reducing impact fees or local access fees to promote development within urban areas, multimodal transportation districts, and a balance of mixed-use development in certain areas or districts, or for affordable or workforce housing.[74]

Some local governments have adopted mobility plans and mobility fees.[75]

Affordable Housing

Housing is considered affordable when it costs less than 30 percent of a family's gross income.[76] A family paying more than 30 percent of its income for housing is considered "cost burdened," while those paying more than 50 percent are considered "extremely cost burdened." Severely cost burdened households are more likely to sacrifice other necessities such as healthy food and healthcare to pay for housing, and to experience unstable housing situations such as eviction.

Affordable housing is defined in terms of household income. Resident eligibility for Florida's state and federally-funded housing programs is governed by area median income (AMI) or statewide median family income,[77] published annually by the United States Department of Housing and Urban Development (HUD).[78] The following are standard household income level definitions and their relationship to the 2022 Florida statewide AMI of $78,300 for a family of four (as family size changes, the income range also varies):[79]

- Extremely low income – earning up to 30 percent AMI (at or below $ 23,500);[80]
- Very low income – earning from 30.01 to 50 percent AMI ($23,501 to $39,150);[81]
- Low income – earning from 50.01 to 80 percent AMI ($39,151 to $62,650); [82] and
- Moderate income – earning from 80.01 to 120 percent of AMI ($62,651 to $94,000).[83]

[74] S. 163.3180(5)(f), F.S.
[75] *See* Hillsborough County Code of County Ordinances, ch. 40, art. III, div. 2, *Mobility Fees*; Pasco County Code of Ordinances, Land Development Code, ch. 1300, s. 1302.2; City of Port St. Lucie Code of Ordinances, Title XV, ch. 159, s. 159.101, *Port St. Lucie Mobility Fee Ordinance*.
[76] S. 420.0004(3), F.S.
[77] The 2022 Florida SMI for a family of four was $79,300. U.S. Dept. of Housing and Urban Development, *Income Limits, Access Individual Income Limits Areas*, available at https://www.huduser.gov/portal/datasets/il.html#2022 (last visited Apr. 19, 2023).
[78] HUD User, Office of Policy Development and Research, "Income Limits," available at https://www.huduser.gov/portal/datasets/il.html#2022 (last visited Feb. 20, 2023) (SMI and AMI available under the "Access In dividual Income Limits Area" dataset).
[79] U.S. Dept. of Housing and Urban Development, *Income Limits*, *Access Individual Income Limits Areas*, available at https://www.huduser.gov/portal/datasets/il.html#2022 (last visited Jan. 25, 2023).
[80] S. 420.0004(9), F.S.
[81] S. 420.0004(17), F.S.
[82] S. 420.0004(11), F.S.
[83] S. 420.0004(12), F.S.

Current law provides for the preemption of county or municipal requirements concerning zoning, density, and height for certain multi-family rental developments in commercial, industrial, and mixed-use areas.[84] For these developments, a county or municipality may not:

- Require a zoning, land use change, special exception, conditional use approval, variance, or a comprehensive plan amendment;
- Restrict density below the highest allowed density on other land where residential development is allowed; and
- Restrict the height of the development below the highest allowed height for a commercial or residential development in its jurisdiction within one mile of the proposed development or three stories, whichever is higher.[85]

Electric Substation Approval Process

The construction of new distribution electrical substations is a permitted use in future land use categories and zoning districts, except for those designated for preservation, conservation, or historic preservation.[86] However, local governments may adopt reasonable land development regulations concerning setback, landscaping, buffering, screening, lighting, and other aesthetic compatibility-based standards.[87] If the local government has not adopted land development regulations concerning substations, the following standards apply:

- In non-residential areas, the substation must comply with setback and landscaped buffer area criteria applicable to other similar uses in that district.
- In residential areas, a setback of up to 100 feet between the substation property boundary and permanent equipment structures must be maintained.[88]

If the application for development of a distribution substation demonstrates that the substation design is consistent with the local government's standards, the local government must approve the application.[89]

Prior to submitting an application for a substation in a residential area, the utility is to consult the local government regarding site selection.[90] The utility must provide information on the proposed site and up to three alternative sites. The local government must make a determination on the proposed sites within 90 days. If the local government and the utility are unable to agree upon a site, the site selection must be submitted to mediation.

If a local government has adopted standards for siting an electrical substation, it must grant or deny an application to locate an electrical substation within 90 days after the date the properly completed application is declared complete.[91] If the local government does not take action on the application within the specified timeframe, the application is deemed automatically approved. Issuance of a permit does not relieve the applicant from complying with applicable federal or state laws or rules or applicable local land development or building rules.

Development Agreements

Local governments may enter into development agreements with developers.[92] A development agreement is a "contract between a local government and a property owner/developer, which provides the developer

[84] Ch. 2023-17, ss. 3 and 5, Laws of Fla. (amending ss. 125.01055 and 166.04151, F.S.).
[85] *Id*.
[86] S. 163.3208(4), F.S.
[87] S. 163.3208(3), F.S.
[88] S. 163.3208(4), F.S.
[89] S. 163.3208(5), F.S.
[90] S. 163.3208(6)(a), F.S.
[91] S. 163.3208(8)(a), F.S.
[92] S. 163.3220(4), F.S.; *See* ss. 163.3220-163.3143, F.S., known as the "Florida Local Government Development Agreement Act." For purposes of the act, a "local government" means any county, municipality, special district, or local government entity established pursuant to law that exercises regulatory authority over, and grants development permit for, land development. S. 163.3221(10), F.S.

with vested rights by freezing the existing zoning regulations applicable to a property in exchange for public benefits."[93]

A local government may establish, by ordinance, procedures and requirements for considering and entering into a development agreement with any person having a legal or equitable interest in real property located within its jurisdiction.[94] A development agreement may provide that the entire agreement, or any phase thereof, must be commenced or completed within a specific time and must include:[95]

- A legal description of the land subject to the agreement and the names of its legal and equitable owners;
- The duration of the agreement;[96]
- The development uses permitted on the land, including population densities, and building intensities and height;
- A description of public facilities that will service the development, including who will provide such facilities, the date any new facilities, if needed, will be constructed, and a schedule to assure public facilities are available concurrent with the impacts of the development;
- A description of any reservation or dedication of land for public purposes;
- A description of all local development permits approved or needed to be approved for the development of the land;
- A finding that the development permitted or proposed is consistent with the local government's comprehensive plan and land development regulations;
- A description of any conditions, terms, restrictions, or other requirements determined to be necessary by the local government for the public health, safety, or welfare of its citizens; and
- A statement indicating that the failure of the agreement to address a particular permit, condition, term, or restriction does not relieve the developer of the necessity of complying with the law governing said permitting requirements, conditions, terms, or restrictions.

A local government must conduct two public hearings before entering into, amending, or revoking a development agreement.[97] The local government must publish a notice of intent to consider the agreement at least seven days before each public hearing in a newspaper of general circulation in the county where the local government is located and provide notice by mail to all affected property owners before the first public meeting.[98]

Within 14 days after a local government enters into a development agreement, the local government must record the agreement with the clerk of the circuit court in the county where the local government is located, and such an agreement is not effective until it is properly recorded.[99] A development agreement binds any person who obtains ownership of a property already subject to an agreement (successor in interest).[100]

A development agreement may be amended or canceled by mutual consent of the parties to the agreement or by their successors in interest.[101] An agreement may also be modified or revoked if a change in state or federal law after the execution of the agreement precludes either party from complying with the terms of the agreement.[102]

[93] *Morgran Co., Inc. v. Orange County*, 818 So. 2d 640 (Fla. 5th DCA 2002); 7 Fla. Jur 2d Building, Zoning, and Land Controls § 168 (2019).
[94] S. 163.3223, F.S; 7 Fla. Jur 2d Building, Zoning, and Land Controls § 168 (2019).
[95] S. 163.3227(1) and (2), F.S.; 7 Fla. Jur 2d Building, Zoning, and Land Controls § 168 (2019).
[96] The maximum length for a development agreement is 30 years, unless it is extended by mutual consent of the local government and the developer. S. 163.3229, F.S.
[97] S. 163.3225(1), F.S.
[98] S. 163.3225(2)(a), F.S.
[99] S. 163.3239, F.S.; 7 Fla. Jur 2d Building, Zoning, and Land Controls § 168 (2019).
[100] A successor in interest is one who follows another in ownership or control of property. A successor in interest retains the same rights as the original owner, with no change in substance. Black's Law Dictionary 1473 (8th ed. 2004); s. 163.3239, F.S.
[101] S. 163.3237, F.S.
[102] S. 163.3241, F.S.

Effect of Proposed Changes

Florida Land Use and Environmental Dispute Resolution Act

The bill revises the FLUEDRA process to allow a negotiated settlement between the private property owner and the governmental entity to include the types of relief a special magistrate may recommend when determining that the government action unreasonably or unfairly burdens the use of his or her property. The bill revises the circumstances a special magistrate may consider when determining whether a development order or enforcement action unreasonably or unfairly burdens a use of property to include the public interest served by the local comprehensive plan provisions that are inconsistent with the proposed relief granted by the special magistrate's recommendation.

The bill provides that in circumstances in which the relief granted by the special magistrate's recommendation or a negotiated settlement contravenes the local comprehensive plan in effect or is inconsistent with the local government's comprehensive plan, the special magistrate or the local governing board may deem the recommendation or approved negotiated settlement consistent with the comprehensive plan if the local government finds that the negotiated settlement and approved development protect the public interest served by the comprehensive plan provisions with which the development conflicts.

Comprehensive Planning

Related to comprehensive planning, the bill:

- Requires comprehensive plan elements and amendments to be based on relevant data and removes the consideration of community goals and vision as a separate component of a local government's analysis.
- Removes a provision that allows local governments to collect and use original data in their analysis.
- Directs comprehensive plans to be based on the greater of the estimates and projections published by the Office of Economic and Demographic Research and the local government.
- Prohibits optional elements of a comprehensive plan from restricting the density or intensity established in the future land use element portion of a comprehensive plan, and amends the definitions of "density" and "intensity" to clarify their use.
- Revises the two required planning periods that must be included in a comprehensive plan from five years to 10 years, and from 10 years to 20 years, bust still allows local governments to adopt additional planning periods for specific components, elements, land use amendments, and projects.
- Requires the chair of the governing body of the county or mayor of the municipality to sign an affidavit attesting that all elements of the comprehensive plan comply with statutory requirements.
- Provides that if a local government fails to submit such evaluation and affidavit to the state land planning agency as statutorily required, the local government may not initiate or adopt any publicly initiated plan amendment to its comprehensive plan until the local government complies with the submission requirements. This prohibition does not apply to privately initiated plan amendments.
- Provides that if a local government fails to update its comprehensive plan, the state land planning agency must provide population projections to the local government that must be utilized in updating the plan.
- Provides that if the state land planning agency finds the update was not in compliance, the agency must establish a timeline of up to 12 months for the local government to address the deficiencies.
- Allows a local government to provide alternative population projections based on professionally accepted methodologies, but only if those projections exceed the population projections provided by the state land planning agency.
- Requires local governments to evaluate and update their comprehensive plans to reflect changes in local conditions, with updates to required elements and optional elements processed in the same plan amendment cycle.
- Requires local land development regulations to contain minimum lot sizes within single-family, two-family and fee-simple, single-family townhouse zoning districts to accommodate the maximum density authorized in the comprehensive plan, net of the area required for other mandatory items, and infill development standards for single-family homes, two-family homes and fee-simple townhouse dwelling units.

- Removes the ability of local governments to require certain building design elements to single-family or two-family dwellings located in a planned unit development or master planned community and limits the application of those elements in communities with a design review board or architectural review board to those who had such a board before January 1, 2020.
- Provides that holders of transportation or road impact fee credits granted under s. 163.3180, F.S., or s. 380.06, F.S., along with other provisions, which existed before the local government adopted an alternative mobility funding system, are entitled to the full benefit of the density or intensity prepaid by the credit balance as of the date the impact fee was first established.
- Provides that the applicant for a development order for an existing development where at least 25 percent of dwelling units are affordable may be granted approval to expand the development to an adjacent parcel in any future land used category as long as at least 25 percent of the new dwelling units are affordable at the time of the initial sale or lease. The bill provides that the development order for the addition, which must be issued in accordance with ch. 120, F.S., does not require further action by the governing body of the local government if the development is consistent with the same land development standards as the existing development and prohibits a local government from restricting the density or height of the new development below that of the existing development. The bill also provides that these provisions are self-executing and do not require the local governing body to adopt an ordinance or a regulation before using the approval process.
- Expands the definition of "electric substation" to include accessory administration or maintenance buildings and related accessory uses and structures, and makes the electric substation approval process applicable to all existing substations.
- Precludes an independent special district from complying the terms of any development agreement, or any other agreement for which the development agreement serves in whole or part as consideration, if the agreement was executed within three months before the effective date of a law modifying the selection manner of the governing body of the independent special district from election to appointment or vice versa. The new governing body of the special district must review any affected agreement within four months of taking office and, after such review, must vote on whether to seek re-adoption of the agreement. This requirement applies to any development agreement that is in effect on, or is executed after, the effective date of this bill. This requirement expires on July 1, 2028, unless saved from repeal by the Legislature.

B. SECTION DIRECTORY:

Section 1: Amends s. 70.51, F.S., relating to land use and environmental dispute resolution.

Section 2: Amends s. 163.3177, F.S., relating to required and optional elements of comprehensive plans.

Section 3: Amends s. 163.31801, F.S.; relating to impact fees.

Section 4: Amends s. 163.3191, F.S., relating to evaluation and appraisal of the comprehensive plan.

Section 5: Amends s. 163.3202, F.S., relating to land development regulations.

Section 6: Creates s. 163.32021, F.S., relating to affordable housing approval process.

Section 7: Amends s. 163.3208, F.S., relating to electric substation approval process.

Section 8: Amends s. 189.031, F.S., which takes effect upon becoming a law, relating to review of special district development agreements.

Section 9: Amends s. 189.08, F.S., conforming cross-references.

Section 10: Amends s. 479.01, F.S., conforming cross-references.

Section 11: Except as otherwise expressly provided in the bill and except for this section, provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The establishment of minimum lot sizes within single-family, two-family and fee-simple, single-family townhouse zoning districts to accommodate the maximum density authorized in the comprehensive plan and the establishment of infill development standards may increase the amount of residential development.

The prohibition on the application of building design standards to certain types of residential development may decrease the cost of constructing such developments.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither provides authority for nor requires rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 10, 2023, the Local Administration, Federal Affairs & Special Districts Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute:

- Removes a provision that would have made the decision of a special magistrate binding;

- Allows for negotiated settlements under FLUEDRA to include the types of relief a special magistrate may recommend;
- Provides that the special magistrate's recommendations or negotiated settlements inconsistent with the local comprehensive plan to be deemed consistent if the recommendations or settlements are found to protect the public interest served by the comprehensive plan;
- Removes a provision that would have required local governments to include affidavits related to their comprehensive plan as part of the annual financial auditing process;
- Revises the relationship between required and optional elements of the comprehensive plan;
- Entails that required elements of the comprehensive plan must processed in the same plan cycle and prohibits updates to optional elements until required elements are updated;
- Requires the comprehensive plan to be updated in a timely manner before publicly-initiated amendments are approved;
- Requires comprehensive plans to establish minimum lot sizes for certain residential zoning districts and to establish infill development standards; and
- Removes a provision related to withholding county transportation funds.

On April 10, 2023, the Commerce Committee adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Clarifies language related to land use and environmental dispute resolutions, and preparation of comprehensive plans.
- Removes changed to certain definitions, including density, urban service area, and urban sprawl.
- Removes a provision that prohibited optional elements of the comprehensive plan from being updated until required elements have been updated, unless those updates are required by law.
- Removes a provision that prohibited levels of service established in a comprehensive plan solely for planning purposes being used as a basis for the denial of a development order or permit.

On April 19, 2023, the State Affairs Committee adopted four amendments and reported the bill favorably as a committee substitute. The amendments:

- Provided that a holder of a transportation or road impact fee credit in existence before the adoption of the alternative mobility funding system by a local government is entitled to full benefit of the density or intensity prepaid by the credit balance;
- Allowed an applicant for a development order for an existing affordable housing development to expand the development to an adjacent parcel in any future land use category subject to certain conditions;
- Revised standards for electric substation approval to apply to all new and existing electric substations; and
- Precluded an independent special district from complying with the terms of any development agreement, or other agreement for which a development agreement served as consideration, that was adopted in the three-month period preceding the effective date of a law modifying the manner of selecting the governing body of that independent special district, and required the district to take certain actions within a specified period.

The analysis is drafted to the committee substitute adopted by the State Affairs Committee.